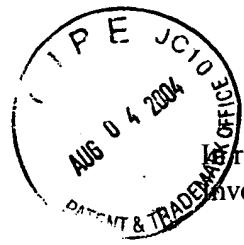


JRW

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**



Patent Application

Inventor(s): James F. Zucherman, Ken Y. Hsu and Charles J. Winslow  
Appln. No.: 10/684,847  
Confirm. No.: 3522  
Filed: October 14, 2003  
Title: INTERSPINOUS PROCESS APPARATUS AND METHOD WITH A SELECTABLY EXPANDABLE SPACER

**PATENT APPLICATION**

Art Unit: 3732  
Examiner: unassigned

**Customer No. 23910**

**CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8**

I hereby certify that this correspondence is being deposited in the United States Postal Service with sufficient postage as first class mail in an envelope addressed to **Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450**, on August 2, 2004.

 (Attorney Signature)

Michael L. Robbins, Reg. No. 54,774  
Signature Date: August 2, 2004

**INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. §1.56**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

It is requested that the information identified in this statement be considered by the Examiner and made of record in the above-identified application. This statement is not intended to represent that a search has been made or that the information cited in the statement is, or is considered to be, material to patentability as defined in 37 C.F.R. §1.56. If this is a continuation, divisional or continuation-in-part application, it is understood that the Examiner will consider all information which was considered by the Office in a parent application. MPEP §609. Such information therefore is not listed herein unless it is desired that the information be printed on a patent issuing from the subject application.

***Enclosed with this statement are the following:***

- Form PTO-1449. The Examiner is requested to initial the form and return it to the undersigned in accordance with M.P.E.P. §609.
- The present application is being/was filed after June 30, 2003. In accordance with the pre-official gazette waiver of 37 CFR 1.98 (a)(2)(i) posted at: [pac/dapp/opla/preognnotice/idswouscopies.htm](http://pac/dapp/opla/preognnotice/idswouscopies.htm), copies of cited U.S. patents and publications are not enclosed. However, copies of cited foreign patent documents and non-patent literature are enclosed in accordance with 37 CFR 1.98(a)(2), as still required, except for those items designated by an asterisk (\*), which were previously submitted

by the applicant in a parent application, from which benefit under 35 U.S.C. §120 is claimed, with an *Information Disclosure Statement* submitted in the parent application which complies with the September 8, 2000 or subsequent revision of 37 C.F.R. §1.98(a-c), as allowed under 37 C.F.R. §1.98(d)(1).

— The present application was filed prior to June 30, 2003. A copy of each cited document as required by 37 C.F.R. §1.98 is enclosed, except for those items designated by an asterisk (\*), which were previously submitted by the applicant in a parent application, from which benefit under 35 U.S.C. §120 is claimed, with an *Information Disclosure Statement* submitted in the parent application which complies with the September 8, 2000 or subsequent revision of 37 C.F.R. §1.98(a-c), as allowed under 37 C.F.R. §1.98(d)(1).

— If any of the cited/submitted documents is in a foreign language, a concise explanation of relevance is provided pursuant to 37 C.F.R. §1.98(a)(3)(i). For foreign language documents cited in a search report by a foreign patent office, the requirement for a concise explanation of relevance is satisfied by the submission herewith of an English language version of the search report. MPEP §609A(3). If a written English-language translation of a non-English language document, or portion thereof, is within the possession, custody or control of, or is readily available to any individual designated in §1.56(c), a copy of the translation accompanies this statement, 37 C.F.R. §1.98(a)(3)(ii), and satisfies the requirement for a concise explanation of relevance, MPEP §609A(3).

— **PTA Statement under 37 C.F.R. §1.704(d).** Each item of information contained in the *Information Disclosure Statement* was cited in a communication from a foreign patent office in a counterpart application and this communication was not received by any individual designated in §1.56(c) more than thirty days prior to the filing of the *Information Disclosure Statement*.

***This statement should be considered because:***

**37 C.F.R. §1.97(b).** This statement qualifies under 37 C.F.R. §1.97, subsection (b) because:

- (1) It is being filed within three months of the filing date of an application other than a continued prosecution application under § 1.53(d);  
-- OR --
- (2) It is being filed within 3 months of entry of a national stage;  
-- OR --
- (3) It is being filed before the mailing date of the first Office Action on the merits,  
-- OR --
- (4) It is being filed before the mailing date of the first Office Action after the filing of a Request for Continued Examination under 37 C.F.R. §1.114.

— **37 C.F.R. §1.97(c).** Although it may not qualify under subsection (b), this statement qualifies under 37 C.F.R. §1.97, subsection (c) because:

- (1) It is being filed before the mailing date of a FINAL Office Action, a Notice of Allowance, or an action that otherwise closes prosecution in the subject application, whichever occurs first.

-- AND (check at least one of the following) --

(1) It is accompanied by a STATEMENT as set forth in 37 C.F.R. §1.97(e).  
                  -- OR --  
 (2) It is accompanied by the \$180 fee set forth in 37 C.F.R. §1.17(p).

— **37 C.F.R. §1.97(d).** Although it may not qualify under subsection (b) or (c), this statement qualifies under 37 C.F.R. §1.97, subsection (d) because:

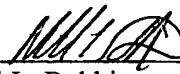
(1) It is being filed on or before payment of the Issue Fee;  
                  -- AND --  
(2) It is accompanied by a STATEMENT as set forth in 37 C.F.R. §1.97(e);  
                  -- AND --  
(3) It is accompanied by the \$180 fee set forth in 37 C.F.R. §1.17(p).

***Fee Authorization.*** The Commissioner is hereby authorized to charge any deficiencies or credit any overpayment to Deposit Account No. 06-1325. A duplicate copy of this authorization is enclosed.

Respectfully submitted,

FLIESLER MEYER LLP

Date: 8/2/04

By:   
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Reg. No. 54,774

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Form PTO-1449 (Substitute)	U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE	Attorney Docket Number <b>KLYC-1056USD</b>	Serial/Patent Number <b>10/684,847</b>
<b>Information Disclosure Statement BY APPLICANT</b> <i>(Use several sheets if necessary)</i>		Applicant/Patent Owner <b>James F. Zucherman et al.</b>	
		Filing/Issue Date <b>October 14, 2003</b>	Group Art Unit <b>3732</b>

FOREIGN PATENT DOCUMENTS							
Examiner Initial		Document Number	Publication Date	Country	Class	Subclass	Translation Yes   No
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	2	EP 140790 A2	10-1984	EPO			
	3	EP 146347 A1	12-1984	EPO			
	4	DE 2821678 A1	4-1980	Germany			
	5	EP 322334 A1	12-1988	EPO			
	6	SU 1484348 A1	6-1989	Soviet Union			
	7	WO 90/00037	1-1990	PCT			
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	24	FR 2782911 A1	3-2000	France			
	25	WO 00/13619	3-2000	PCT			
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	29	FR 2806614 A1	9-2001	France			
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32	Minns, R.J., et al., <i>Preliminary Design and Experimental Studies of a Novel Soft Implant for Correcting Sagittal Plane Instability in the Lumbar Spine</i> , SPINE Volume 22, Number 16, pp.1819-1825, © 1997, Lippincott-Raven Publishers
33	Waldemar Link, brochure entitled <i>Wirbelsäulen-Chirurgie: Instrumentarium Und Implantate Zur Wirbelsäulen-Chirurgie</i> (Spinal Surgery: Instrumentation and Implants for Spinal Surgery), Waldemar Link, Hamburg, Germany
34	Haruo Tsuji, et al., <i>Ceramic Interspinous Block (CISB) Assisted Anterior Interbody Fusion</i> , Journal of Spinal Disorders, Vol.3, No.1, pp.77-86, ©1990 Raven Press, Ltd., New York
35	Richard W. Porter, MD, FRCS, FRCSE, <i>Spinal Stenosis and Neurogenic Claudication</i> , SPINE Volume 21, Number 17, pp.2046-2052, ©1996, Lippincott-Raven Publishers

Examiner	Date Considered
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\*EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

\*1 = Copy not submitted because it was submitted in prior application SN / \_\_\_\_\_, filed \_\_\_\_\_, 20\_\_\_\_\_, relied on under 35 USC §120.

\*2 = Copy not submitted because it was submitted in prior application SN / \_\_\_\_\_, filed \_\_\_\_\_, 20\_\_\_\_\_, relied on under 35 USC §120.